IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MFA.No. 475 of 2002()

OPMV.1359/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANT: PETITIONER IN OP(MV)

GEORGE, S/O.JOSEPH,
THEKKANATH HOUSE, NEAR CURCH MURINGOOR,
THEKKUMMURY VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS IN OP(MV)

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1. V.S.UDAYAN, S/O.SANKARAN,
VADAKKEDATH HOUSE, CHALAKUDY.

* 2. SADASIVAN, S/O.SUBRAMANIAN,
ARACKAL HOUSE, CHERUVALLOOR P.O.(DELETED)

(THE NAME OF THE 2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT/PETITIONER, AS PER ORDER DATED 10.7.2007 ON I.A.NO.1399/2007)

3. ORIENTAL INSURANCE COMPANY,
CHALAKUDY.

BY ADV. SRI.ANCHAL C.VIJAYAN
SRI.MATHEWS JACOB

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A. No.475 OF 2002

Dated this the 6th day of August, 2007.

J U D G M E N T

The applicant, petitioner, in O.P.(M.V.) No.1359/1995, on the file of the Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant. This appeal is filed by the appellant challenging the quantum of compensation awarded to him by the Tribunal. Appellant sustained injuries in a motor vehicle accident on 15.4.1995 He filed the original petition impleading owner, driver and insurer. The owner and driver disputed the negligence alleged. It was contented that the accident occurred due to the negligence of the appellant, who suddenly stopped in front of a moving vehicle. It was also contented that the driver was also having valid licence and the vehicle was covered with a valid policy of insurance. The 3rd respondent disputed the negligence alleged. It was contented that there was inordinate delay in filing the F.I.R. It was alleged that the appellant colluded with respondents 1 and 2, and there was violation of policy conditions. The quantum of compensation claimed was also disputed. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle. It

was also found that the appellant is entitled to get a compensation of Rs.45,000/=. The Insurer was directed to pay the amount. Challenging the quantum, the petitioner himself has filed this appeal.

2. The only question arising for consideration is whether the appellant is entitled to get any additional compensation. Appellant sustained fracture Trimalleolar left ankle with displacement. There was contusion on the left ankle joint. The evidence shows that an open reduction and internal fixation was also done. The appellant produced a disability certificate showing that he was having 10% disability. The evidence on record shows that the appellant had underwent treatment for more than 2 ½ months, and thereafter, he underwent physiotherapy. The appellant was 49 years old at the time of the accident. The Tribunal rejected the disability certificate, on the ground that the appellant did not examine the doctor. Considering all the aspects of the matter, I am of the opinion that the Tribunal ought to have fixed the disability at least to 5%, and compensation calculated. If 5% is taken as the disability, the compensation on that account will comes to more than Rs.10,000/=. Hence, I am of the view that the appellant is entitled to get the amount of Rs.10,000/= more as additional compensation, and that will carry interest at the

rate of 6%. According to the appellant, the Tribunal ought to have awarded Rs.5000/= for pain and sufferings. I am also of the opinion that Rs.5000/= ought to have been awarded on that count, and hence I award Rs.3000/= more on that count. I do not find any reason to modify the amount awarded on other counts.

In the result, the appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.10000/= as additional compensation from the third respondent, Insurance Company, with 6% interest from the date of petition, till the date of realisation. The third respondent is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.475 of 2002

J U D G M E N T

Dated: 6th August, 2007.